

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Pacific Gas and Electric Company

v.

Docket No. EL01-29-000

California Power Exchange Corporation

Southern California Edison Company

v.

Docket No. EL01-33-000

California Power Exchange Corporation

Coral Power, L.L.C., Enron Power
Marketing, Inc., Arizona Public
Service Company, Cargill Alliant,
LLC, San Diego Gas & Electric
Company, Avista Energy, Inc.,
Sempra Energy Trading Corp.,
PacifiCorp, and Constellation
Power Source

v.

Docket No. EL01-36-000

California Power Exchange Corporation

Salt River Project Agricultural
Improvement and Power District
and Sacramento Municipal Utility
District

v.

Docket No. EL01-37-000

California Power Exchange Corporation

Public Service Company of New

Mexico

v.

Docket No. EL01-43-000

California Power Exchange Corporation

ORDER ON COMPLAINTS CONCERNING
USE OF CHARGEBACKS AND LIQUIDATION OF COLLATERAL

(Issued April 6, 2001)

This order addresses five complaints against the California Power Exchange Corporation (PX) concerning its response to alleged defaults by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SoCal Edison). Three of the complaints, filed by various entities (collectively, Complainants),¹ request a determination that the PX's use of chargebacks against sellers into the PX market to cover the alleged defaults of PG&E and SoCal Edison is not authorized by the PX tariff and is unjust and unreasonable given the current circumstances in California. In this order, we direct the PX to rescind all prior chargeback actions and refrain from any future chargebacks actions as related to PG&E's and SoCal Edison's liabilities, subject to our further action on the complaints as discussed below. In addition, we dismiss as moot complaints filed by PG&E and SoCal Edison regarding the PX's intended liquidation of those entities' block forward contracts.

Background

The instant complaints concern the PX's implementation of certain provisions of its tariff in response to nonpayments by SoCal Edison and PG&E, two investor-owned utility distribution companies. Schedule 2, Section 5 of the PX tariff includes a number of provisions concerning the steps the PX will take in the event of default by a PX debtor.

¹The complaint in Docket No. EL01-36-000 was jointly filed by: Coral Power, L.L.C. (Coral); Enron Power Marketing, Inc. (Enron); Arizona Public Service Company; Cargill Alliant, LLC; San Diego Gas & Electric Company (SDG&E); Avista Energy, Inc.; Sempra Energy Trading Corp.; PacifiCorp; and Constellation Power Source. The complaint in Docket No. EL01-37-000 was jointly filed by Salt River Project Agricultural Improvement and Power District (Salt River) and Sacramento Municipal Utility District (SMUD). The complaint in Docket No. EL01-43-000 was filed by Public Service Company of New Mexico (PSNM).

Section 5 starts off by stating, "If a PX Participant default occurs in the Core Market, the PX Participant will be deemed to have defaulted in all CTS and Core Markets." The Core Market includes the PX's Day-Ahead and Day-Of energy markets. The CTS Market, which is run by California Trading Services, a division of the PX, includes the block forward energy market. Section 5.2.1 provides that the PX shall make reasonable enforcement efforts against the defaulting debtor's collateral. Section 5.2.2 provides that the PX shall draw upon its pool performance bond.

Also, the PX tariff authorizes the PX to use a chargeback, which is an allocation mechanism intended to allow the PX to recover the uncollected receivables of a defaulting PX debtor from the remaining participants in the PX market. The chargeback is described in Section 5.3, which states that:

In the event that amounts owed to the PX Participants on a payout date cannot be fully paid due to an insufficiency of funds in the PX clearing accounts, the PX will allocate the shortage to the PX Participants using the proportional charge-back methodology described below. If payments are recovered, they will be remitted to the relevant PX Participants on the same basis using the same ratio as the original charge-back.

Default charge-back to PX CORE MARKET Participants shall be assessed using the following methodology:

The PX Participant's outstanding default amount will be charged back to all current PX Participants based upon the percentage of its gross sales in MWhs to the total gross MWhs sales in the Core Market during the three calendar months preceding the event plus the current month-to-date.

The Commission accepted the PX chargeback mechanism as part of PX tariff Amendment No. 18.²

SoCal Edison and PG&E are experiencing significant financial problems. On January 16 and 17, 2001, the credit and debt ratings of SoCal Edison and PG&E were downgraded to "junk" status. On January 16, 2001, SoCal Edison filed a Form 8-K with the Securities and Exchange Commission (SEC) disclosing that it would suspend indefinitely certain obligations including a \$215 million payment to the PX, and subsequently failed to make payment on the due date of January 18, 2001. On February 1, 2001, PG&E filed a

²See California Power Exchange Corporation, 92 FERC ¶ 61,096 (2000).

Form 8-K with the SEC stating its intention to default on payments of over \$1 billion due to the PX and certain Qualifying Facilities.

The PX took several steps in response to these developments. On January 16, 2001, the PX demanded collateral from SoCal Edison and PG&E. After the utilities failed to provide the requested collateral, the PX suspended their trading privileges on January 18, 2001. The PX also informed SoCal Edison that it intended to liquidate SoCal Edison's block forward contracts, and began applying the chargeback mechanism against other market participants, including PG&E.

On January 19, 2001, SoCal Edison filed a complaint in the Superior Court of the State of California for the County of Los Angeles (State Court Complaint) seeking a declaratory judgment that it cannot be found in default in the PX markets, because its performance has been prevented by Uncontrollable Forces, as that term is defined in the PX tariff.³

On January 31, 2001, the Governor of California signed executive orders authorizing the "commandeering" of PG&E's and SoCal Edison's block forward contracts under the California Emergency Services Act,⁴ and those contracts were subsequently commandeered by the State of California. The PX has invoiced the State for approximately \$1 billion and is submitting a claim to the California Victim Compensation and Government Claims Board (Government Claims Board Complaint).⁵

On January 31, 2001, the PX suspended trading in its Core Markets.

On February 20, 2001, the U.S. District Court for the Central District of California issued an injunction against the PX (Federal Court Injunction).⁶ The Court noted that the Injunction would preserve the status quo until the Commission had issued a ruling on the propriety of chargebacks. The Federal Court Injunction, which was stipulated to by the

³Southern California Edison Company v. California Power Exchange Corporation, No. BC243658 (Cal. Super. Ct. L.A. filed Jan. 19, 2001).

⁴CA Exec. Order Nos. D-20-01 and D-21-01. As the Executive Orders use the term "commandeer," for consistency, we will use the same term.

⁵PX answer in Docket Nos. EL01-36-000, EL01-37-000, and EL01-43-000, at 16 (Feb. 28, 2001).

⁶Enron Power Marketing, Inc. v. California Power Exchange Corporation, No. 01-00901 (C.D. Cal. Feb. 20, 2001).

parties, directs the PX to refrain from, among other things: (1) issuing invoices for chargebacks; (2) declaring further defaults based on chargebacks; (3) taking actions to collect funds from market participants for the purpose of paying chargebacks; and (4) requiring the posting of any additional collateral or security, based on chargeback assessments. Further, the Federal Court Injunction states that "[n]othing shall preclude CalPX from continuing its normal invoicing process for the Core . . . and CTS markets as they come due, but CalPX shall not calculate the charge back on those invoices" Finally, the Federal Court Injunction provides that if the Commission has not issued a decision on the chargeback issue by May 4, 2001, parties may apply to the District Court for further review.

On March 13, 2001, the PX notified the Commission that it had filed for Chapter 11 bankruptcy protection on March 9, 2001. On March 15, 2001, the PX filed a letter in Docket Nos. EL01-29-000, EL01-33-000, EL01-36-000, EL01-37-000, and EL01-43-000, stating its view that the automatic stay provision of the bankruptcy code, 11 U.S.C. § 362, prohibited the Commission and parties "from continuing further litigation in the above proceedings as such litigation pertains to CalPX, including filing responsive pleading pursuant to Commission notices."

Complaints

Docket No. EL01-29-000

On January 23, 2001, PG&E filed a motion requesting an immediate order directing the PX to stay liquidation of PG&E's block forward contracts. PG&E argues that the PX's attempts to cover SoCal Edison's nonpayments in the Core Markets by both withholding payments due under PG&E's block forward contracts and liquidating those contracts violate the PX tariff. According to PG&E, the PX tariff requires the PX to handle accounts in the CTS Markets separately from accounts in the Core Markets.

Docket No. EL01-33-000

On February 2, 2001, SoCal Edison filed a motion requesting a cease-and-desist order to stop the PX from liquidating its block forward contracts. SoCal Edison argues that the PX's proposed method of liquidating SoCal Edison's block forward contracts will cause irreparable harm to SoCal Edison and its customers by essentially allowing the counterparties to buy them at distress terms.

Docket No. EL01-36-000

The complaint in Docket No. EL01-36-000, filed on February 8, 2001, observes that PG&E and SoCal Edison have defaulted on significant amounts owed not only to the PX but also to the California Independent System Operator Corporation (ISO). Complainants indicate that as a result of those defaults, certain PX participants have been issued chargeback invoices from the PX or have been notified that the PX intends to use the chargeback mechanism to recover revenue shortfalls the PX incurs on behalf of the ISO. Complainants assert that the PX's use of the chargeback mechanism is unjust and unreasonable for several reasons, as discussed below.

First, Complainants argue that the PX should not be allowed to use the chargeback mechanism to recover the defaults of PG&E and SoCal Edison. According to Complainants, when the PX was discussing its chargeback proposal with the market participants, the concern of all, including the PX, PG&E, and SoCal Edison, was directed toward defaults that would result in failure to deliver power, not failures by the utilities to pay for it.

Second, Complainants contend that the chargebacks are already expanding as PX participants refuse them and are treated by the PX as defaultors, and they indicate that the PX has advised certain participants that the last of them will be charged back for the total defaults. Complainants argue that the PX tariff does not explicitly authorize such iterative application of the chargeback mechanism. In support, Complainants assert that section 5.3 of Schedule 2 to the PX tariff simply prescribes a process under which the chargeback is calculated on the basis of each PX participant's proportional share of gross sales in the PX Core Market. Further, Complainants also assert that section 5.3 does not explicitly provide that any uncollected portion of a PX participant's original default can be re-charged to the other participants that have already paid their share of the default.

Third, according to Complainants, the PX intends to implement the chargeback to cover a portion of defaults of PG&E, SoCal Edison, and others on their February 2001 invoices for purchases of Imbalance Energy in the real-time market operated by the ISO. Complainants assert, however, that the PX has no authority under its tariff to implement the chargeback in this manner, and they argue that section 11.16.1 of the ISO's tariff already provides that any relevant shortfalls will be spread proportionally among those parties that are owed money for Imbalance Energy transactions in the ISO's market. Thus, Complainants argue, under the PX's intended implementation of the chargeback mechanism, those who have supplied power to the PX will be inappropriately charged for others' defaults to the ISO.

Finally, Complainants assert that the Governor's commandeering of SoCal Edison's and PG&E's block forward contracts negated a critically important feature of the PX's mitigation procedures insofar as a majority of the bids made into the PX's Day-Ahead and Day-Of markets have traditionally been made by the large California utilities. Consequently, Complainants conclude, a large amount of PX volume will no longer be backstopped by the collateral offset requirements of the PX's tariff, rendering the entire chargeback mechanism unjust and unreasonable.

Complainants request that the Commission suspend the PX's further use of the chargeback. In support of their request, Complainants contend that such a suspension would be in the public interest since it would preserve the status quo ante while questions surrounding the PX's dissolution are resolved in an orderly fashion. Complainants also contend that such a suspension is necessary because it would prevent the situation in California from causing irreparable fiscal injury to PX market participants.

Docket No. EL01-37-000

The complaint in Docket No. EL01-37-000, filed on February 12, 2001, largely reiterates the assertions and requested relief discussed above. In addition, Complainants: (1) argue that the PX's use of the chargeback mechanism is not proper insofar as PG&E and SoCal Edison are in the process of disputing the charges assessed to them by the PX and insofar as they have contested the default notices issued against them; and (2) request that the Commission direct the PX to cease the issuance of default notices to market participants and to rescind any previously issued default notices.

Docket No. EL01-43-000

The complaint in Docket No. EL01-43-000, filed on March 2, 2001, largely reiterates the assertions and requested relief discussed above. In addition, PSNM requests that the Commission: (1) direct the PX to refund to PSNM all amounts the PX has offset against amounts owed; and (2) consolidate the instant complaint with the complaints in Docket Nos. EL01-36-000 and EL01-37-000.

Notices of Filing and Responses

Docket No. EL01-29-000

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 9565 (2001), with comments, protests, and motions to intervene due on or before February 12, 2001.

Timely motions to intervene raising no substantive issues were filed by: BP Energy Company; the California Electricity Oversight Board (Oversight Board); the ISO; Mirant Potrero, LLC, Mirant Delta, LLC, and Mirant Americas Energy Marketing, LLC (jointly, Mirant); Strategic Energy, LLC (Strategic Energy); and Tucson Electric Power Company (Tucson).

Morgan Stanley Capital Group, Inc. (Morgan) filed a timely motion to intervene and a protest.

On January 30, 2001, SoCal Edison filed a motion to intervene and comments in support of the complaint.

On February 12, 2001, the PX filed an answer, in which it argues that it has acted consistent with its tariff but the complaint is moot anyway as a result of the Governor's commandeering of PG&E's block forward contracts.

On February 28, 2001, SoCal Edison filed a second pleading (SoCal Edison Consolidation Request), in which it requests that the Commission consolidate Docket Nos. EL01-29-000, EL01-33-000, EL01-36-000, and EL01-37-000. The SoCal Edison Consolidation Request also asks that the Commission: (1) provide certain clarification of how block forward transactions should be valued now that the Core Markets have been suspended;⁷ (2) direct the PX to continue to act as Scheduling Coordinator for block forward positions until further order; and (3) direct those entities with open block forward positions to continue to honor the terms of their block forward transactions.

On February 28, 2001, PG&E filed a motion to consolidate Docket Nos. EL01-29-000, EL01-33-000, EL01-36-000, and EL01-37-000 (PG&E Consolidation Request).

Docket No. EL01-33-000

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 11,573 (2001), with comments, protests, and motions to intervene due on or before March 2, 2001.

⁷Block forward contract payments are settled according to a formula that factors in the Market Clearing Price in the PX Day-Ahead market. Now that the PX Day-Ahead market has been suspended, SoCal Edison argues that the Market Clearing Price should be deemed zero, in which case buyers will pay, and sellers will receive, the price at which they agreed to transact. SoCal Edison Consolidation Request at 18.

Timely motions to intervene raising no substantive issues were filed by: the City of Santa Clara, California; the City of Vernon, California; Mirant; Modesto Irrigation District (Modesto); Reliant Energy Power Generation, Inc., and Reliant Energy Services, Inc. (jointly, Reliant); Strategic Energy; Turlock Irrigation District; and Universal Studios.

Enron filed a timely motion to intervene and a protest. Duke Energy Trading and Marketing, LLC (Duke) filed a timely motion to intervene and comments.

The Public Utilities Commission of the State of California (California Commission) and the Oversight Board filed motions to intervene out of time.

On February 20, 2001, the PX filed an answer, in which it argues that the complaint is moot as a result of the Governor's commandeering of SoCal Edison's block forward contracts.

On February 28, 2001, SoCal Edison filed a copy of its Consolidation Request.

On February 28, 2001, PG&E filed a timely motion to intervene and a copy of its Consolidation Request.

Docket No. EL01-36-000

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 10,678 (2001), with comments, protests, and motions to intervene due on or before February 28, 2001.

The California Commission filed a notice of intervention raising no substantive issues. Timely motions to intervene also raising no substantive issues were filed by: Arizona Electric Power Cooperative, Inc. (Arizona); Automated Power Exchange, Inc.; the Cities of Redding and Santa Clara, California (jointly, Cities); Dynegy Power Marketing, Inc.; El Paso Merchant Energy, L.P. (El Paso); Idaho Power Company; Modesto; the Oversight Board; SMUD; Salt River; Strategic Energy; and Tucson.

Timely motions to intervene with comments supporting the complaint were filed by: AES NewEnergy, Inc.; the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (jointly); the City of Vernon, California (Vernon); Duke; Exelon Generation Company, LLC; the Los Angeles Department of Water and Power (LADWP); Midway Sunset Cogeneration Company; Mirant; Morgan; Nevada Power Company and Sierra Pacific Power Company (jointly, Nevada Companies); Powerex Corp.; Reliant; Transalta Energy Marketing (California) Inc.; and Williams Energy Marketing and Trading Company (Williams). In general, these intervenors echo Complainants' concerns regarding the PX

chargebacks, and they request that the Commission direct the PX to suspend its use of the chargeback mechanism.

On February 12, 2001, the PX filed an answer (February 12 Answer) stating that although it does not concede the merits of the complaint, it does agree that the Commission should issue a standstill order subject to four conditions. First, the PX argues that, during the time the standstill is in effect, the Commission should also suspend the relevant provisions of both the ISO tariff and the PX's ISO Scheduling Coordinator Agreement (SC Agreement) that hold the PX responsible as the principal for amounts owed to the ISO by PX participants. Second, the PX asserts that it cannot make payments to its creditors resulting from the PX's clearinghouse function while the standstill is in effect because any apportionment of available cash would require use of the chargeback mechanism. Third, the PX contends that the Commission should allow the PX to continue to engage in its normal invoicing process for the Core and CTS markets as they come due while the standstill is in effect. Fourth, the PX states that any order the Commission adopts in this proceeding must also be binding as to all PX participants and the ISO.

On February 28, 2001, the ISO filed a motion to intervene and response to the PX's February 12 Answer, asserting that the PX's request for suspension of the ISO tariff and SC Agreement is inappropriate in the context of the complaint. Specifically, the ISO contends that the scope of the complaint – i.e., the PX's role as an operator of the Day-Ahead and Day-Of markets – is entirely separate and distinct from the PX's role as a Scheduling Coordinator to the ISO. In addition, the ISO observes that the PX's market functions are governed by the PX tariff, while the PX's duties and responsibilities as a Scheduling Coordinator are governed by the ISO tariff and the SC Agreement. As such, the ISO asserts, the decision as to whether or not to order a standstill of the PX's chargeback authority has no impact on the PX's responsibilities as a Scheduling Coordinator to the ISO. Further, the ISO also asserts that the PX request is procedurally inappropriate insofar as the Commission's precedent is clear that a party seeking to modify a tariff, such as the ISO tariff, must do so through a separate complaint.⁸

On February 28, 2001, SoCal Edison and PG&E each filed motions to intervene and copies of their Consolidation Requests.

⁸ISO response at 6, citing Louisiana Power & Light Co., 50 FERC ¶ 61,040 at 61,062-63 (1990); and Lakeland Pipe Line Co., 65 FERC ¶ 63,021 at 65,129 (1993).

On February 28, 2001, Northern California Power Agency (NCPA) filed a motion to intervene. NCPA also filed a motion requesting consolidation of Docket Nos. EL01-36-000, and EL01-37-000, and essentially asking that the Commission adopt the relief granted in the Federal Court Injunction (NCPA Consolidation Request).

On February 28, 2001, the PX filed a second answer (February 28 Answer), contending that Complainants' assertions regarding the chargeback mechanism are without merit for a number of reasons. First, the PX asserts that the chargeback mechanism was not intended to be limited to ensuring delivery of energy, and it argues that the relevant provision contains no such restrictive language. Second, the PX indicates that it does not implement the chargeback mechanism in an iterative manner insofar as the PX regards each event as a discrete event and insofar as the mechanism is only applied to nondefaulting participants as a result of failure to pay a normal Core market invoice.⁹ Third, the PX observes that it attempted to liquidate PG&E's and SoCal Edison block forward contracts in order to offset those entities' defaults, and that the ultimate outcome of that action was the commandeering of the contracts by the State of California. Thus, the PX contends, it has in fact made every reasonable attempt to recover the defaulted amounts. Fourth, the PX asserts that PG&E and SoCal Edison have clearly defaulted on payment obligations and on their respective obligations to post collateral. Fifth, the PX argues that the Governor's commandeering of the block forward contracts does not prohibit the PX from applying the chargeback mechanism insofar as the Governor must pay a "reasonable value" for the contracts and insofar as the PX intends to credit the participants if and when any such payment is made. The PX also requests that the Commission consolidate Docket Nos. EL01-36-000 and EL01-37-000.

Docket No. EL01-37-000

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 11,104 (2001), with comments, protests, and motions to intervene initially due on or before March 5, 2001. On February 16, 2001, the Commission issued a notice shortening the comment period to and including February 28, 2001.

The California Commission filed a notice of intervention raising no substantive issues. Timely motions to intervene also raising no substantive issues were filed by: Arizona; Cities; El Paso; the ISO; Modesto; Nevada Companies; Reliant; Strategic Energy;

⁹The PX commits that any default chargeback arising from failure to pay a "special default notice" (i.e., a notice of default on a chargeback invoice) will not be assessed to other market participants; instead, it will simply remain as an outstanding amount due from the relevant participant. February 28 Answer at 8.

Vernon; and Williams. A timely motion to intervene with comments supporting the complaint was filed by Duke.

A timely motion to intervene and limited protest was jointly filed by Coral and Enron. These intervenors indicate that although they support the complaint in most respects, they do not support the argument that the PX's use of the chargeback mechanism is improper on the basis of SoCal Edison's State Court Complaint. In particular, Coral and Enron contend that the State Court Complaint's reliance on the term "Uncontrollable Forces" is not supported by Commission precedent, and, thus, the instant complaint's relevant argument is also without merit.¹⁰

In addition, Mirant and the Oversight Board filed separate motions to intervene out of time raising no substantive issues, and LADWP filed a motion to intervene out of time with comments supporting the complaint.

The PX filed a copy of its February 28 Answer.

On February 28, 2001, SoCal Edison, PG&E, and NCPA each filed motions to intervene and copies of their Consolidation Requests.

Docket No. EL01-43-000

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 14,379 (2001), with comments, protests, and motions to intervene due on or before March 22, 2001.

Timely motions to intervene also raising no substantive issues were filed by: Arizona; Cities; El Paso; Mirant; Modesto; Nevada Companies; PG&E; SMUD; and SoCal Edison. A timely motion to intervene with comments supporting the complaint was filed by Williams.

The California Commission filed a motion to intervene out of time.

Discussion

Procedural Matters

¹⁰Protest at 6 and n.1, citing Public Service Company of New Hampshire v. New Hampshire Electric Cooperative, Inc., 86 FERC ¶ 61,174 at 61,600 (1999); and Transwestern Pipeline Co., 44 FERC ¶ 61,164 at 61,539 (1988).

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the California Commission's notices of intervention and the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

In view of the early stage of this proceeding, the interests of the parties, and the absence of any undue prejudice or delay, we find good cause to grant the untimely, unopposed motions to intervene filed by the California Commission, LADWP, Mirant, and the Oversight Board.

With respect to the various requests to consolidate, we believe it is appropriate to address all of these dockets in a single order. However, as we are not setting any of the matters for hearing, there is no need to consolidate the dockets. Therefore, we deny the requests.

Commission Determination

With respect to the complaints in Docket Nos. EL01-29-000 and EL01-33-000, we find that the issues regarding the PX's liquidation of PG&E's and SoCal Edison's block forward contracts are moot. There is no need for the Commission to stop the PX from liquidating the block forward contracts; as explained above, the California Governor already has taken that action.¹² Accordingly, we dismiss those complaints as moot.

With respect to the complaints in Docket Nos. EL01-36-000, EL01-37-000, and EL01-43-000, we find that the PX's use of the chargeback mechanism has had and will continue to have an impact on otherwise creditworthy PX participants that will exacerbate the existing adverse market conditions in California. Simply put, we believe that the chargebacks, were they to be assessed under those circumstances, would cause virtually all PX participants to default, thereby compounding adverse market conditions throughout the entire Western region. Therefore, we conclude that the chargeback provision in the PX tariff was not designed to address default of this magnitude¹³ and, thus, its application in these circumstances is unjust and unreasonable. Accordingly, we direct the PX to: (1)

¹¹18 C.F.R. § 385.214 (2000).

¹²We take no position on whether the State's commandeering of wholesale power sales contracts is in conflict with provisions of the Federal Power Act.

¹³We note that when the PX filed Amendment No. 18 to its tariff to add the chargeback mechanism, it proposed to maintain a surety pool performance bond initially in the amount of \$20 million to cover default in its spot markets, a fraction of the chargeback amounts now at issue. 92 FERC at 61,377 n. 2.

rescind all prior chargeback actions related to PG&E's and SoCal Edison's liabilities; and (2) refrain from taking any future chargeback action related to PG&E's and SoCal Edison's liabilities.

With regard to the ultimate question of how the PX should account for the nonpayments by SoCal Edison and PG&E, we note that a decision on either SoCal Edison's State Court Complaint, concerning whether it is, in fact, in default, or the PX's Government Claims Board Complaint, seeking compensation for the State of California's commandeering of PG&E and SoCal Edison's block forward contracts, would have significant implications. Therefore, we will defer further action on this matter. We direct the PX, within 30 days of resolution of either the State Court Complaint or the Government Claims Board Complaint, to provide the Commission with the decision and a report detailing its impact, if any, on this proceeding. If either the State Court Complaint or the Government Claims Board Complaint has not been resolved within 90 days of the date of issuance of this order, we direct the PX, within 100 days of the date of this order, to file with the Commission a report describing the status of the unresolved Complaint(s), the status of any related proceedings, and the projected date(s) of resolution. Complainants and intervenors will then be granted adequate opportunity to comment on the PX's report, after which time the Commission will consider further action on the complaints in Dockets No. EL01-36-000, EL01-37-000, and EL01-43-000.

Finally, with regard to the PX bankruptcy proceeding, although the Bankruptcy Code provides that the filing of a bankruptcy petition automatically stays certain actions against the debtor,¹⁴ the Code also provides an exception from this automatic stay for:

An action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.¹⁵

The Commission has found in the past that actions taken under the authority granted it by the Federal Power Act and the controlling regulations fit within this exception, and, therefore, are exempt from the automatic stay provision.¹⁶ In the instant matter, we are

¹⁴11 U.S.C. § 362(a)(1) (1994).

¹⁵11 U.S.C. § 362(b)(4) (1994).

¹⁶See Virginia Electric and Power Company, 84 FERC ¶ 61,254 (1998); and
(continued...)

exercising our regulatory power under sections 205 and 206 of the Federal Power Act as permitted by section 362(b)(4) of the Bankruptcy Code to issue an order that does not threaten the bankruptcy court's control over the property of the bankruptcy estate.¹⁷

The Commission orders:

(A) The complaints in Docket Nos. EL01-29-000 and EL01-33-000 are hereby dismissed as moot, as discussed in the body of this order.

(B) The PX is hereby directed to: (1) rescind all chargeback actions related to PG&E's and SoCal Edison's liabilities; and (2) refrain from taking any future chargeback action related to PG&E's and SoCal Edison's liabilities, as discussed in the body of this order.

¹⁶(...continued)

Century Power Corp., 56 FERC ¶ 61,087 (1991). The Commission conclusion on this matter is consistent with judicial precedent regarding the scope of the exemption to the automatic stay. E.g., Board of Governors of the Federal Reserve System v. MCorp Fin., Inc., 502 U.S. 32 (1991); SEC v. Brennan, 250 F.3d 65 (2nd Cir. 2000); NLRB v. Continental Hagen Corp., 932 F.2d 828 (9th Cir. 1991); United States v. Commonwealth Cos. Inc. 913 F.2d 518 (8th Cir. 1990); NLRB v. Edward Cooper Painting, Inc. 804 F.2d 934 (6th Cir. 1986); Penn Terra Ltd. v. Dept. of Environmental Resources, 733 F.2d 267 (3rd Cir. 1984); see generally 3 Collier on Bankruptcy § 362.05 (15th ed. rev. 2000).

¹⁷The PX operates only as an intermediary to facilitate transactions between buyers and sellers. In this capacity, it collects money from load serving entities that it then pays to sellers, thus acting solely as a conduit for those funds. See Official Comm. of Unsecured Creditors v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.), 997 F.2d 1039, 1061 (3d Cir. 1993) (where FERC ordered pipeline to collect refunds from upstream suppliers and flow the money through to the pipeline's customers, the pipeline was merely a conduit for the money owed by suppliers to overcharged customers and therefore the refunds were not property of the pipeline's bankruptcy estate). See also In re Dameron, 155 F.3d 718 (4th Cir. 1998) (funds held by attorney as intermediary between lenders and third parties were not property of attorney's estate in bankruptcy); Branch v. Hill, Holliday, Connors, Cosmopoulos, Inc. Advertising, 165 B.R. 972, 977 (Bankr. D. Mass. 1994) (where parent collected funds from subsidiaries and made a "straight pass-through of the funds" to pay advertising firm, the funds were not the property of the parent's bankruptcy estate).

(C) Within either 30 days of resolution of either SoCal Edison's State Court Complaint or the PX's Government Claims Board Complaint, or, if either of those Complaints is not resolved within 90 days of the date of issuance of this order, within 100 days of the date of issuance of this order, the PX is hereby directed to file a report with the Commission, as discussed in the body of this order.

(D) The requests to consolidate are hereby denied.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.